

REMARKS/ARGUMENTS

This Amendment accompanies a Request for Continued Examination (RCE) and is filed subsequent to an interview held with Examiners Ahmed and Sheikh on July 30, 2008. This Amendment and the Remarks that follow include the substance of the interview as required by MPEP §713.04.

During the interview the examiners were shown samples of (a) a powdered cosmetic, (b) a pressed powder cosmetic and (c) the non-pressed powder cosmetic of the present application. As included in the description of their invention, applicant's preparation of a cosmetic "with a solid consistency" and with "an excellent powdery marking effect" (page 1, lines 6-7 and line 23). The cosmetic is prepared by "extruding a paste" consisting of a fatty emulsion and a mixture of coloring powders, "extruding (the) paste" and then drying the extruded product (page 2, lines 2-5). The product has a solid consistency, is powder free and permits direct application onto the skin without the need for an applicator such as a puff or brush (*see* generally page 7, lines 15-22). The product is easy to apply and provides a creamy finish even though the product is powder-based.

The claims have been amended in order to emphasize various aspects of the invention. More specifically, the subject matter of dependent claims 22 and 26 have been incorporated into claim 18 and claims 33 and 37 incorporated into claim 29.

Two further independent claims are added featuring the additional step of claim 41, step (e) of sizing the dried product (the last step of original claim 10). New claim 42 is based upon claim 18 with the additional sizing step and new claim 43 is based upon claim 29 with the additional sizing step. Claim 41 has been canceled.

Turning now to the issues presented in the outstanding Official Action, applicant's claims clearly specify that the process is directed to a non-press powder make-up cosmetic and is clearly distinguished from the disclosures of Verdon et al U.S. 4,994,264. As discussed during the interview, Verdon requires pressing following extrusion and the passage at column 4, lines 28-36 reads as follows:

"The paste is then extruded at a temperature of about 10° to 35 °C in a standard cosmetic powder compression molding device under standard cosmetic powder molding conditions.

ANCOROTTI, R.
Appl. No. 10/500,332
September 8, 2008

The composition is molded into the desired shape and then removed from the compression molding device and dried at a temperature of about 40° to 55°C to a final moisture content of about 0.25 to 7%."

The fact that Verdon requires press molding is reflected in the term "press molded" in claims 1-7, 11 and 12 and by implication due to their dependency in claims 8-10. Indeed, the process of claim 7 specifically requires a press molding step.

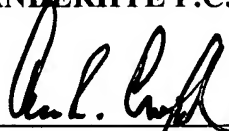
It is clear then that Verdon et al does not provide a procedure for forming a non-press product as featured in applicant's claims.

Reconsideration of this application and allowance of all pending claims is solicited. Should the examiner require further information or wish to see the samples of various products as were exhibited during the interview, please contact the undersigned.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____



Arthur R. Crawford
Reg. No. 25,327

ARC:eaw
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100